

December 30, 2020

Mr. Stephen L. Huber
Exploration Research, Inc.
6339 Howard Lane
Elkridge, Maryland 21075

RE: BGE – Mays Chapel Substation,
Fence and Equipment Upgrades
Forest Conservation Variance
Tracking # 03-20-3330

Dear Mr. Huber:

A request for a variance from Baltimore County's Forest Conservation Law was received by this Department of Environmental Protection and Sustainability (EPS) on October 21, 2020. The variance seeks approval to remove or significantly impact the critical root zone (> than 1/3 the area) of four (4) specimen trees for the installation of upgraded security fence, improvements to an existing vehicular access and improvements and expansion of the existing electrical power substation. The four trees to receive impacts are native oaks, two of which are in poor condition, within the existing forest stands. A preliminary forest conservation plan (FCP)/variance plan was included with the application and the FCP illustrates that the project will satisfy or exceed its 0.7-acre break-even-point retention requirement and that impacts to specimen trees will be minimized through the use of tree protection fence along the southeast corner of the substation expansion's limit of disturbance. The break-even-point acreage of 0.7 acres will be exceeded as a 0.8-acre Forest Conservation Easement will be recorded in the Land Records of Baltimore County via a right-of way plat or in conjunction with the amending of the existing Mays Chapel development plan record plat.

The Director of EPS may grant a special variance to the Forest Conservation law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the three criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the

petitioner of all beneficial use of his property. The applicant is seeking to expand the existing substation to make safety improvements and to provide improved electrical service at a facility that existed well prior to the effective date of the Forest Conservation Law. While the application of the law would provide a hardship, it does not deprive the petitioner of all use of the property and so this criterion has not been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The expansion of the long-standing electrical substation, improvements to the existing access and the locations and extent of existing specimen trees and forest stands are due to unique circumstances associated with the facility and the property itself rather than the general conditions in the neighborhood. Therefore, we find that this criterion has been met.

The third criterion (Subsection 33-6-116 (d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The expansion efforts will not result in a change in use of the property, and the building expansion and much of the existing forest is proposed to be retained even though it is not being placed in an FCE due to allow for future energy needs that may arise. The essential character of the neighborhood will not change and the infrastructure improvements should improve electrical service and public safety of the neighborhood. Therefore, we find that this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. In addition to the creation of 0.8 acres of FCE, the proposed expansion has complied with current stormwater requirements. Therefore, we find that granting of the special variance will not adversely affect water quality and that this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance which is the result of actions taken by the petitioner. The petitioner has not taken any actions necessitating this variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. Permitting the impacting of four of fourteen specimen trees in conjunction with an expansion of an existing electrical substation that is complying with both the Forest Conservation and Stormwater Managements Laws and that is far removed from riparian Forest Buffer areas would be consistent with the spirit and intent the Forest Conservation Law. Therefore, this criterion has been met.

Based on our review, this Department finds that the required criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Prior to issuance of any Baltimore County permit, blaze orange high visibility tree protection fence shall be installed along all limits of disturbance (LOD) wherever the LOD is within 50 feet of any specimen trees and proposed Forest Conservation Easements. This tree protective fence shall be illustrated on the plan view and mentioned in the sequence of operations on both the sediment control and final Forest Conservation Plans.
2. The outer limits of the Forest Conservation Easements shall be permanently posted at 100-foot intervals or at any turning point with “Forest Conservation–Do Not Disturb” signs, which are available from private sign contractors. The signs must be installed prior to issuance of any permits for the expansion project or by May 3, 2021, whichever comes first.
3. The stone parking area within Forest Stand F-4 and within the critical root zones of Specimen Tree # 8 through Specimen Tree # 12, inclusive, shall be abandoned and the access to it barricaded at the existing stone drive that is to be converted to asphalt.
4. The following notes must appear on all subsequent plans for this project:
 - “A special variance was granted on December 20, 2020 to Baltimore County’s Forest Conservation Law to allow permanent impacts to the critical root zones of four specimen trees onsite. Conditions were placed on this variance, including limiting access to Forest Stand F-4, conserving 0.8 acres of forest in Forest Conservation Easement and protecting the remaining specimen trees onsite.”
 - “A special variance to Baltimore County’s Forest Conservation Law may be required for future removal of any specimen trees within this property.”
5. A final forest conservation plan, based on the variance plan and preliminary Forest Conservation plan and addressing the conditions of this variance as well as the requirements of Section 33-6-110, must be submitted to EPS and approved prior to grading and sediment control plan approval.
6. As offered, the 0.8-acre Forest Conservation Easement (FCE) shall be recorded in the Land records of Baltimore County in accordance with the

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policies and procedures of both PAI, Development Management and Real Estate Compliance by July 1, 2021.

7. This variance approval does not exempt future development activities at this site from compliance with Baltimore County's Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the appropriate representative sign the statement below and return a signed copy of this entire letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Mr. Michael Kulis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Director

DVL/msk

C. Marian Honeczy, Maryland DNR

I/we agree to the conditions enumerated in this approval letter to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

BGE Representative

Date

Printed Name